

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of Kevin Sistrunk and
Kaarma Insurance Agency, Inc.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

The above-entitled matter came before Administrative Law Judge Manuel J. Cervantes (ALJ) pursuant to a Notice and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges issued by the Minnesota Department of Commerce (Department) and filed with the Office of Administrative Hearings (OAH) on April 14, 2008. The hearing in this matter was held at the OAH in St. Paul, Minnesota, on October 20, 21, and 22, 2008. The record closed on December 24, 2008, upon the filing of proposed findings and conclusions.

Christopher M. Kaisershot, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101, appeared on behalf of the Department. James D. Capra, Esq., 26 Exchange Street East, Suite 310, St. Paul, MN 55101, appeared on behalf of Respondents, Kevin Sistrunk and Kaarma Insurance Agency (Respondents).

STATEMENT OF ISSUES

The issues in this case are whether Respondents are subject to discipline by the Commissioner of the Department because Respondents have:

1. Forged or caused to be forged numerous signatures on insurance policy applications and electronic funds transfer (EFT) forms, engaged in fraudulent, coercive, or dishonest practices, and/or engaged in acts that demonstrate they are incompetent, untrustworthy, financially irresponsible, or otherwise unqualified to act under the license granted by the Commissioner in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4) (2006), 60K.43, subd. 1(8) and (10) (2001), and Minn. R. 2795.1000 (2007);
2. Provided false, misleading, or incomplete information to the Department in violation of Minn. Stat. §§ 45.027, subds. 1a and 7(a)(3) (2006), and 60K.43, subd. 1(2) (2001); and
3. Engaged in an act that demonstrates they are incompetent, untrustworthy, financially irresponsible, or otherwise unqualified to act under the license granted by the Commissioner by failing to remit unearned advanced commissions paid to them from

three different insurance companies in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4) (2006), 60K.43, subd. 1(8) (2001), and Minn. R. 2795.1000 (2007).

The ALJ concludes that the Department has demonstrated by a preponderance of the evidence that Respondents have violated the aforementioned Minnesota statutes and rules and therefore subject to the imposition of discipline by the Commissioner of Commerce pursuant to Minn. Stat. §§ 45.026, 45.07, and 60K.43.

Based on the evidence adduced at the hearing, the ALJ makes the following:

FINDINGS OF FACT

1. On July 12, 1996, the Department issued Sistrunk a resident insurance producer's license, No. 20097763. Sistrunk's license lapsed on October 31, 2006. Under Minn. Stat. §§ 45.027, subd. 11 and 60K.43, subd. 5 (2001), the Commissioner timely instituted this proceeding because it had been less than two years since Sistrunk's license was last in effect.

2. On April 20, 2001, the Department issued Kaarma Insurance Agency, Inc. (Kaarma) a resident insurance agency license, No. 20271882. Kaarma was owned and operated by Sistrunk. Kaarma's license also lapsed on October 31, 2006. Under Minn. Stat. §§ 45.027, subd. 11 and 60K.43, subd. 5 (2001), the Commissioner timely instituted this proceeding because it had been less than two years since Kaarma's license was last in effect.

3. Kaarma's letterhead identified it as providing the following services: wealth planning, estate protection, investments, insurance, tax planning, retirement planning, college planning, and mortgage services. Sistrunk's business card identified him as a "Senior Financial Consultant."¹ As such, Respondents owed "a fiduciary duty to persons for whom services are performed for compensation" under Minn. Stat. § 45.026, subd. 2 (2006).

4. On July 12, 1996, Sistrunk signed a Servicing Agent Agreement with Family Life Insurance Company (Family Life). The agreement provided that Family Life would pay Sistrunk "first-year commissions on premiums accepted by the Company" In the event that the premium was refunded to the customer, "the Company shall charge to the Agent's account all commissions on the premium so refunded." Sistrunk worked as an agent for Family Life from July 12, 1996 until he was terminated, on or about November 2, 2003 at the general agent's request.²

5. On June 24, 2003, Sistrunk signed a Master Special Agent Agreement with Federal Life Insurance Company (Federal Life). The agreement provided that

¹ Ex. 10.

² Ex. 5; see also Bicky Tran, Family Life ("Tran Test.") and Ken Wallach Testimony, Family Life ("Wallach Test.").

Federal Life would pay advanced twelve-month commissions on annual and semi-annually renewed policies, and advanced six-month commissions on quarterly, and check-o-matic renewed policies. If a policy canceled or terminated before such commissions had been earned, the agreement provided that said unearned, advanced premiums must be refunded by Sistrunk. Sistrunk worked as an agent for Federal Life from July 2003 until he was terminated in September 2005.³

6. Americo Financial Life & Annuity Insurance Company (Americo) had a similar agency agreement with Sistrunk that paid advance commissions. Specifically, Americo paid Sistrunk a nine-month advance commission with each initial monthly premium payment received by Americo. The commissions earned over the next eight months were then applied to offset the advance commission balance already paid. At the conclusion of the nine-month period, additional commissions could be earned on the next three monthly payments. If any premium payment was returned or refunded, or if the policy was otherwise terminated before the end of the nine-month period, any outstanding advanced commissions would be charged back to Sistrunk. Sistrunk worked as an agent for Americo from July 9, 2003 until he was terminated on February 13, 2004.⁴

7. Subsequent to Sistrunk's tenure with Family Life in November 2003, Sistrunk engaged in a pattern of conduct where he attempted to switch Family Life customers to policies issued by either Federal Life or Americo without their prior consent or he submitted new applications to Federal Life or Americo without the customer's knowledge. If he succeeded, Sistrunk was paid advanced commissions on these new policies. He accomplished this by using the customers' voided checks and EFT forms which Sistrunk still possessed from the initial Family Life insurance applications.

8. With one exception, each of Respondents' former customers who testified at the hearing said that documents purporting to contain their signatures were not genuine and had been forged.⁵ The only exception, Freddie Neal, testified that while his signature appeared on various insurance documents, he never intended to apply for new insurance through Americo and that the insurance documents contained material misstatements of fact.⁶

9. There were numerous inconsistencies in the documents, including representations on policy applications that Sistrunk admitted he knew were not true at the time they were made, i.e., telling Americo Vice President Cathy Hunt on

³ Ex. 17; *see also* Wallach Test.; Neil Riordan Testimony, Family Life ("Riordan Test."); Christine Kaefer Testimony, Family Life ("Kaefer Test.").

⁴ Ex. 7; *see also* Steve Hittner Testimony, Americo ("Hittner Test.")

⁵ Hubert Browne Testimony ("Browne Test."); Claire Buckner Testimony ("Buckner Test."); Kevin Crofton Testimony ("Crofton Test."); Brian Holthusen Testimony ("Holthusen Test."); Yvonne Smith Testimony ("Smith Test."); Deanne Williams Testimony ("Williams Test."); *see also* Hittner Test.; Riordan Test.; Wallach Test.

⁶ Freddie Neal Testimony ("Neal Test.).

February 13, 2004 that he did not know that customer Crofton was going to cancel his Family Life policy⁷ and yet in an earlier letter to Americo Compliance Specialist Steve Hittner, date-stamped February 3, 2004, Sistrunk wrote that Crofton **was** going to cancel his policy with Family Life.⁸ (Emphasis added.)

10. Respondents' customers who were, by and large, complete strangers to one another made independent, yet identical, allegations of improprieties against Respondents.⁹

11. Respondents submitted unapproved applications for insurance policies on behalf of their customers for the benefit of third parties, third parties whom the customers did not know or were not shown to exist.

12. Respondent received substantial economic gain from these unapproved transactions in the form of advance commission payments.

Freddie Neal Policies

13. With the assistance of Respondents, Freddie Neal purchased an initial life insurance policy with Family Life in 1996.¹⁰ On or about November 23, 2003, and shortly after being terminated by Family Life, Respondents obtained Neal's signatures on an Americo life insurance policy application that was countersigned by Sistrunk and submitted to Americo without Neal's knowledge or consent for the purchase of new life insurance. Included with Neal's application was an EFT that directed Americo to withdraw Neal's premium payments from a checking account held by William Perkins, along with a voided check from Perkins' checking account, check No. 2188.¹¹

14. On both the EFT authorization and the insurance application, Respondents wrote that Perkins was Neal's brother. Respondents wrote the reason for this third-party arrangement was because Neal's personal checking account at Honeywell Federal Credit Union did not allow EFT drafts.¹² Americo accepted the application materials and issued a new policy.

15. The Perkins' account charge was denied because of insufficient funds and on January 16, 2004, Americo mailed Neal a bill for premiums due and owing for the new policy.¹³ On January 23, 2004, Neal sent a letter to Americo complaining about the "fraudulent policy that was taken out on me by one of your agents." Neal wrote Americo that he did not have a brother named William Perkins, did not know anyone named

⁷ Ex. 4 at DOC00341.

⁸ Ex. 4 at DOC00383; a replacement policy triggers an obligation on the part of the agent to provide replacement information to the prospective insured, pursuant to Minn. Stat. §§ 61A.55 and 61A.60 (1996).

⁹ Browne Test., Smith Test., Williams Test., Holthusen Test., Buckner Test., Crofton Test., and Neal Test.

¹⁰ Ex. 16 at DOC000842.

¹¹ Ex. 16 at DOC000781 - DOC000782, DOC000785.

¹² Ex. 16 at DOC000782.

¹³ Ex. 16 at DOC000787.

William Perkins, did not have an account at Honeywell Federal Credit Union, and that the policy application contained other incorrect personal information about him.¹⁴

16. On February 7, 2004, Sistrunk sent Neal a letter claiming that “my good intentions have been misconstrued.” Sistrunk suggested that Family Life was in “financial turmoil for the past year” and that he no longer worked for that company in an attempt to better serve his clients.¹⁵

17. Sistrunk was terminated from Family Life on November 2, 2003 because of lacking productivity and the poor quality of Sistrunk’s customer base.¹⁶

18. On February 20, 2004, Neal provided Americo with an Affidavit stating “that I am the person named as the proposed insured on the attached Application for Life Insurance dated November 23, 2003 and state that my signature on said document was not written or authorized by me and is a forgery.”¹⁷ Americo canceled policy No. M0008388, and filed a report of suspected fraud with the Department.¹⁸

19. At the hearing, Neal testified consistently with the information contained in his letter to Americo of January 23, 2004, referenced above.¹⁹

20. Both in response to the Department’s request for written information and to an Order to Appear, Sistrunk represented to the Department that William Perkins was Freddie Neal’s brother and that the transaction was legitimate.²⁰

William Perkins’ Policy

21. Approximately five weeks before the Neal application, or on October 16, 2003, Respondents submitted what were purported to be William Perkins’ signatures on an Americo life insurance policy application. Sistrunk countersigned it and submitted it to Americo. Included with the Perkins’ application was an EFT that purportedly authorized Americo to withdraw premium payments from his checking account. Also attached was a copy of the same voided check, No. 2188 that Respondents submitted about one month later to Americo with the Neal insurance application.²¹

¹⁴ Ex. 16 at DOC000783; *see also* Ex. 16 at DOC000786 and DOC000905.

¹⁵ Ex. 16 at DOC000780.

¹⁶ Tran Test.

¹⁷ Ex. 16 at DOC000784.

¹⁸ EX. 16 at DOC000933 - DOC000934, DOC000985 - DOC000986; Hittner Test.

¹⁹ Neal Test.

²⁰ Ex. 9; Ex. 16 at DOC000804 - DOC000805, DOC000903; Pam Gergen Testimony (“Gergen Test.”); *see also* Ex. 18 (Department investigator’s notes regarding Sistrunk’s statement regarding policies obtained for Neal, Hubert Browne, Kevin Crofton, and Brian Holthusen).

²¹ Ex. 3 at DOC000245; *see also* Ex. 21 at DOC001231 (“I absolutely cannot recall any oral conversations regarding the policy [obtained for William Perkins and paid for by Hubert Browne]”).

22. Americo accepted the Perkins application materials and issued a new policy.

23. On or about October 27, 2003, within 10 days of the Perkins application submission, Sistrunk sent Americo a facsimile directing it to deduct Perkins' premium payments from a joint-checking account held by Hubert Browne and Yvonne Smith. It stated, in relevant part:

Please draft initial premium today 10/27/03 on policy # M0007590 on William Perkins. William is closing his account due to divorce. Please draft from son, Hubert Browne, account voided check attached. Account info verified by myself.²²

24. While Respondents claimed that Perkins' account was closing on October 27, 2003, Respondents used the same account and voided check, No. 2188, on November 23, 2003, to establish automatic premium payments on the policy application for Freddie Neal.²³

25. Approximately one year later, or on September 10, 2004, Browne and Smith complained to Americo after they discovered that it had been deducting funds from their account, resulting in numerous personal checks returned for insufficient funds and late charges on their mortgage payment. In addition, Browne advised Americo that William Perkins is not his father and does not know anyone by that name.²⁴

26. On October 4, 2004, Americo refunded \$3,144.80 to Browne and Smith, representing \$2,603.80 for premiums paid on the Perkins policy, plus \$541 for the bank fees that resulted from the unauthorized deductions.²⁵ In March 2005, Americo voided the Perkins policy, No. M0007590, due to non-payment of premium.²⁶

Hubert Browne and Yvonne Smith Policies

27. On or about August 9, 2003, Respondents submitted what were purported to be Hubert Browne's and Yvonne Smith's signatures on life insurance policy applications that Respondents submitted to Americo. Included with the Browne and Smith applications was an EFT that purportedly authorized Americo to withdraw premium payments from their joint-checking account.

28. Americo accepted the application materials and issued two new policies.

²² Ex. 3 at DOC000242 and DOC000244; *see also* Ex. 21 at DOC001250, #20 ("After 4 years, I do not recall the details to rebut these allegations.").

²³ Ex. 3 at DOC000245.

²⁴ Browne Test; Hittner Test.; Ex. 3 at DOC000339.

²⁵ Ex. 3 at DOC000269.

²⁶ Hittner Test.

29. On September 8, 2004, Browne and Smith complained to Americo after they discovered it had been deducting funds without authority from their account; including deductions for the unauthorized Perkins policy. This resulted in numerous personal checks returned unpaid because of insufficient funds and late charges on their mortgage payments.

30. On November 23, 2004, Smith provided Americo with an Affidavit stating "that I am the person named on the attached Request for Pre-Authorized Check form dated August 9, 2003 and state that my signature on said document was not written or authorized by me and is a forgery."²⁷

31. On December 7, 2004, Americo canceled the new policies and refunded the Browne and Smith premiums.²⁸

Kevin Crofton's Policies

32. Kevin Crofton had initially purchased life insurance from Respondents on a policy issued by Family Life in approximately December 2002.²⁹

33. On or about January 8, 2004, and within months after being terminated by Family Life, Respondents submitted what were purported to be Crofton's signatures on a life insurance policy application that was countersigned by Sistrunk and submitted to Americo.³⁰ Included with the Crofton application was an EFT that purportedly authorized Americo to withdraw premium payments from his checking account.³¹

34. Americo accepted the application materials and issued a new policy.

35. Crofton became aware of the policy when he noticed a deduction to his account from Americo. On January 23, 2004, Crofton sent the following facsimile to Americo to cancel the policy:

I am writing after talking with [your] customer svc lady. She told me to fax this. **I explained that I never signed anything or authorized anyone to make withdrawals out of my bank acct.** I was given a story by [your] agent, Kevin Sistrunk that my ins. co. Family Life, is on shaky ground, going to go under etc... He then said he was going to switch me to [your] ins. co. and that I needed to call Family Life and cancel my policy. When I called them, they said that the info. I was given by [your] agent is false and they are quite angry that he is spreading this info. In fact they want a written statement from me about

²⁷ Ex. 3 at DOC000237 - DOC000240; Browne Test.; Smith Test.

²⁸ Ex. 3 at DOC000268 at DOC000270.

²⁹ Crofton Test; Sistrunk Test.; Ex. 4 at DOC000363 - DOC000366.

³⁰ Ex. 4 at DOC000367 - DOC000369.

³¹ Ex. 4 at DOC000370.

what he told me so they can investigate. Anyway I want this policy of yours canceled and my money refunded.³² (Emphasis added.)

36. On January 27, 2004, Respondents faxed Crofton articles from a Texas newspaper regarding Family Life's business operations and, thus, were able to temporarily dissuade him from canceling the Americo policy.³³

37. Nevertheless, on March 1, 2004, Crofton directed Americo to cancel the policy, No. M0008501, due to "fraudulent statements" about Crofton's health on the forged insurance application.³⁴

38. Americo canceled the new policy and refunded Crofton's premiums.³⁵

Brian and Aimee Holthusen's Policies

39. In August of 2003, Brian and Aimee Holthusen met with Sistrunk in their home to discuss the purchase of life insurance. Mr. Holthusen had to leave the meeting early to go to work and before he signed any insurance application materials.³⁶

40. On or about August 7, 2003, Respondents submitted what was purported to be Mr. Holthusen's signatures on a life insurance policy application that was countersigned by Sistrunk and submitted to Americo. Included with Mr. Holthusen's application was an EFT that purportedly authorized Americo to withdraw premium payments from his checking account.³⁷ Sistrunk advised that withdrawals do not occur until policies are delivered.

41. The Holthusens did not hear from Respondents again. Americo issued two policies based on the submitted Holthusen applications.³⁸ Respondents failed to deliver any insurance policies to them but deductions began immediately.³⁹

42. In January 2004, the Holthusens discovered a number of personal checks were returned because of insufficient funds. Upon further inquiry, they learned that Americo had been making automatic monthly withdrawals since August 2003 in the amount of \$105.53.⁴⁰

³² Ex. 4 at DOC000375.

³³ Ex. 4 at DOC000371 - DOC000373, and DOC000388.

³⁴ Ex. 4 at DOC000377.

³⁵ Crofton Test.; Hittner Test; Ex. 4 at DOC000378.

³⁶ Holthusen Test.; Ex. 21 at DOC001251, #38 ("After all this time, I don't recall the details to rebut this allegation nor do I have any documents in my possession or control to support my position").

³⁷ Ex. 11 at DOC000489 - DOC000492.

³⁸ Hittner Test.

³⁹ Holthusen Test.

⁴⁰ Ex. 11 at DOC000481 - DOC000485, DOC000503 - DOC000507.

43. On January 20, 2004, the Holthusens filed a complaint with Americo against Respondents.⁴¹ On February 13, 2004, Americo canceled and refunded the Holthusens' premiums.⁴²

Charlotte Watson's Policy

44. On November 23, 2003, and shortly after being terminated by Family Life, Respondents submitted what was purported to be Claire Buckner's signature on an EFT that authorized Americo to withdraw premium payments from her checking account to pay for Charlotte Watson's new life insurance policy. Respondents represented to Americo that the reason a third-party was paying for Watson's insurance policy was that Buckner was Watson's aunt.⁴³

45. Respondents had Buckner's signature and voided check on file because she had purchased mortgage insurance from Respondents in 2002 when she was advised by Respondents that the mortgage company required it.⁴⁴

46. On February 8, 2007, Buckner provided Americo with an Affidavit stating "that I am the person named on the attached Request for Pre-Authorized Check form dated November 23, 2003 and state that my signature on said document was not written or authorized by me and is a forgery."⁴⁵

47. On March 6, 2007, Americo refunded \$1,845.50 to Buckner for the premium payments made for Watson's policy.⁴⁶ Americo unsuccessfully attempted to contact Watson and ultimately canceled the policy.⁴⁷

48. At the hearing, Buckner denied having a niece by the name of Charlotte Watson.

Robert Quarterman's Policy

49. On November 17, 2003, and shortly after being terminated by Family Life, Respondents submitted what was purported to be the authorized re-use of D. Williams' signature on an EFT that authorized Americo to withdraw premium payments from her checking account to pay for Robert Quarterman's new life insurance policy. Respondents wrote in the margin on the authorization that Quarterman was D. Williams' brother.⁴⁸

⁴¹ Ex. 11 at DOC000481 - DOC000485.

⁴² Ex. 11 at DOC000499 - DOC000501.

⁴³ Ex. 12 at DOC000531 - DOC000532; *see also* Ex. 8 at DOC000457 - DOC000458; *see also* Ex. 21 at DOC001236 ("I absolutely do not recall any conversation with Charlotte Watson.").

⁴⁴ Buckner Test.

⁴⁵ Ex. 12 at DOC000530; Buckner Test.

⁴⁶ Ex. 12 at DOC000533 - DOC000534, DOC000980; Hittner Test.

⁴⁷ Ex. 12 at DOC000981 - DOC000982; Hittner Test.

⁴⁸ Ex. 1 at DOC000006 - DOC000007.

50. Respondents had D. Williams' signature and voided check on file because she had purchased life insurance from Respondents in October 2003.⁴⁹

51. The reuse of an ETF is prohibited.⁵⁰

52. On February 7, 2006, D. Williams provided Americo with an Affidavit of Forgery stating that she did not authorize Respondents to re-use her EFT authorization or the voided check and, as such, that the November 17, 2003 EFT authorization was a forgery.

53. On March 8, 2006, Americo refunded \$2,560.95 to D. Williams for the premium payments made for Quarterman's policy.⁵¹ Americo unsuccessfully attempted to contact Quarterman and ultimately canceled the policy.⁵²

54. At the hearing, D. Williams testified that Quarterman is not her brother and that she does not know anyone by that name.⁵³

Roosevelt Williams' Policy

55. With the assistance of Respondents, D. Williams obtained a life insurance policy through Federal Life in about June 2004. D. Williams authorized Federal Life to pay her premiums with automatic deductions from her checking account.

56. On or about February 17, 2005, Respondents submitted what was purported to be D. Williams' signature on an EFT that purportedly authorized Federal Life to withdraw premium payments from her checking account to pay for Roosevelt Williams' (Roosevelt) new life insurance policy. Respondents wrote on the policy application that D. Williams was Roosevelt's sister, and altered D. Williams' check by redacting all her personal information with the exception of her name.⁵⁴

57. Federal Life accepted the application materials, issued a new policy and paid Sistrunk advanced premiums on that policy.

58. D. Williams discovered the unauthorized deductions after she canceled her Federal Life policy in February 2006, and deductions for Roosevelt's policy continued to be withdrawn by Federal Life.

⁴⁹ Williams Test.

⁵⁰ Hittner Test.

⁵¹ Ex. 1 at DOC000017.

⁵² Hittner Test.

⁵³ Williams Test.

⁵⁴ Ex. 2 at DOC000035 and DOC000039; see also Ex. 21 at DOC001237 ("I don't remember any oral contacts with Roosevelt Williams."); Ex. 22 at DOC0001253, #51 ("After 4 years, I do not recall the details to rebut these allegations").

59. On April 25, 2006, D. Williams sent a facsimile to Federal Life stating that Roosevelt was not her brother and denying that she authorized any deductions for Roosevelt's policy.⁵⁵

60. On May 10, 2006, Federal Life contacted Respondents for an explanation to D. Williams' complaint. Federal Life's file notes state as follows: "Kevin kept saying that Deanne is probably short on money and that is why she wants her premium back. I specifically asked why he put down that they are brother and sister and who altered the check, but Kevin remained evasive."⁵⁶

61. On May 12, 2006, Federal Life refunded \$1,004.88 to D. Williams for the premium payments made for Roosevelt's policy.⁵⁷ Federal Life unsuccessfully attempted to contact Roosevelt and ultimately canceled the policy.⁵⁸

Gwendolyn King's Policy

62. On or about November 11, 2004, Respondents submitted what was purported to be Gwendolyn King's signatures on a life insurance policy application that was countersigned by Sistrunk and submitted to Federal Life. Included with the King application was an EFT that purportedly authorized Federal Life to withdraw premium payments from her checking account. Federal Life accepted the application materials and issued a new policy.⁵⁹

63. On February 26, 2005, King sent a letter to Federal Life denying that she signed any insurance documents or otherwise authorized deduction from her checking account:

I, Gwendolyn King, did not meet with any agent from your company to draw up a life insurance policy. I have life [insurance and have] been with my company for 13 1/2 years . . . I suggest you talk with this agent and cancel anything with Gwendolyn King on it⁶⁰

64. Ms. King's signature on the February 26 letter is quite different and does not appear to be the same as the signatures on the Federal Life insurance application and EFT document.

65. On March 18, 2005, Federal Life canceled King's policy as requested, however, Federal Life did not provide a refund, in part, because King did not request one.⁶¹

⁵⁵ Ex. 2 at DOC000030 - DOC000032.

⁵⁶ Ex. 2 at DOC000033 - DOC000034; *see also* Riordan Test.

⁵⁷ Ex. 2 at DOC000040 - DOC000041.

⁵⁸ Riordan Test; Wallach Test.

⁵⁹ Riordan Test; Wallach Test. Ex. 13 at DOC000536 - DOC000538.

⁶⁰ Ex. 13 at DOC000535

⁶¹ Riordan Test; Wallach Test.; Ex. 13 at DOC000545.

Audrey Reed's Policies

66. With the assistance of Respondents, Audrey Reed purchased a life insurance policy from Federal Life on or about July 31, 2004. Respondents provided Federal Life with an EFT authorization and Reed's personal check, No. 2292, to establish automatic payments.⁶²

67. Almost immediately, Reed instructed her bank to cancel the EFT authorization for policy No. FF0728175. According to Federal Life's policy notes, the "September and October payments came back Advises Not Authorized" and on February 12, 2005, the policy lapsed for non-payment of premium.⁶³

68. On February 12, 2005, Respondents submitted what was purported to be Reed's signature on another policy application and EFT authorization. Respondents attached a copy of the same personal check, No. 2292, to the EFT authorization, and paid the initial premium with a Money Order.⁶⁴

69. Federal Life accepted the application materials and issued a new policy on February 14, 2005.

70. On February 24, 2005, Reed called Federal Life to dispute that she purchased the policy. On March 2, 2005, Reed confirmed her phone call to Federal Life with the following letter:

I'm writing this letter in response to our conversation on 2/24/2005. As I indicated in our conversation, I did not give Mr. Kevin [Sistrunk] the authority to set up a new contract with Federal Life nor did I give him permission to withdraw premiums from my account. The voided check Federal Life has on file is from a transaction that took place over a year ago. I informed Mr. Kevin [Sistrunk] that I was not interested in a new policy. It appears that Mr. Kevin [Sistrunk] has ignored my request and submitted the old voided check as a means to setup a new contract. I'm hereby requesting that you cancel the policy and do not withdraw any premiums from my account. . . .⁶⁵

71. On or about March 24, 2005, Respondents denied Reed's allegations and claimed that a competitor was attempting to steal the account. Respondents indicated that they would provide an update to Federal Life by April 7, 2005. There is no

⁶² Ex. 14 at DOC000565.

⁶³ Ex. 14 at DOC000569 - DOC000572.

⁶⁴ Ex. 14 at DOC000564 and DOC000567; Ex. 21 at DOC0001254, #62: "After 4 years, I do not recall the details to rebut these allegations."

⁶⁵ Ex. 14 at DOC000563.

evidence that Respondents made contact as agreed by the April 7 deadline. Federal Life canceled the policy, effective April 8, 2005.⁶⁶

Ieshia Powell's Policies

72. On or about January 16 and February 13, 2005, Respondents submitted what were purported to be Ieshia Powell's signatures on life insurance policy applications that were countersigned by Sistrunk and submitted to Federal Life to provide life insurance coverage for Powell and her four-year-old son, C.S. Included with the applications were EFTs that purportedly authorized Federal Life to withdraw premium payments from Powell's checking account.⁶⁷

73. Federal Life accepted the application materials and issued the new policies on January 17 and February 18, 2005, respectively.⁶⁸

74. On May 25, 2005, Powell sent Federal Life a letter to dispute that she purchased the policies:

My name is Ieshia Powell. My contract number is FF0730766. According to this company, I have [agreed] to a 50,000 policy for my son and I. I am writing this letter to say I never agreed to this policy. I never signed anything, as a matter of fact I don't have any records of my own that shows that I agreed to this, not even a policy. The amount of 75.00 has been taken out of my account. I canceled my account because I am scared that other money might get taken. I never gave him Ken/Kevin Sistrunk permission for anything Please cancel this policy and give me my money back.⁶⁹

75. On or about June 3, 2005, Respondents denied Powell's allegations and claimed that she was just trying to get her money back.⁷⁰

76. Federal Life Vice President Ken Wallach investigated and interviewed Powell because of a pattern of complaints against Respondents. Wallach's report of June 6, 2005 to Federal Life states, in relevant part, as follows:

Ieshia Powell says she never signed any applications for these policies. I asked Ieshia Powell to fax me her driver's license and compared the signatures. Her signatures, especially the closed "P" in her last name on her drivers license issued 12/04 matches the signature on her faxed

⁶⁶ Riordan Test; Ex. 14 at DOC000591.

⁶⁷ Ex. 15 at DOC000635 - DOC000638, DOC000642 - DOC000643.

⁶⁸ Ex. 15 at DOC000653 and DOC000654, respectively.

⁶⁹ Ex. 15 at DOC000647.

⁷⁰ Riordan Test; Ex. 15 at DOC000651.

complaint letter but looks different from the eight signatures we have in her policies.

. . . .

I asked Ieshia Powell why she waited so long to complain and she said as soon as she got the letter from Kathi she called Kathi and complained. There is a note in the system dated 2/8/05 that Kath Szafranski received a call from Ieshia Powell claiming that she never signed any forms for insurance or bank withdrawals. Ieshia hung up before Kathi could give her more information. Kathi called agent Kevin Sistrunk and left a detailed message on his voice mail relaying Ieshia Powell's complaints and asking that he call her.

. . . .

Based on this information, I recommend that we refund all the premium paid and cancel the policies as Not Taken.

The Ieshia Powell complaint follows a pattern of similar Kevin Sistrunk complaints from unrelated policyholders such as Gwendolyn King dated 2/26/05, [and] Audrey Reed dated 3/2/05.... In my opinion, based on the information above, Federal Life should seriously consider terminating agent Kevin Sistrunk.⁷¹

77. On July 14, 2005, Federal Life cancelled both policies as Not-Taken as of the date of their issuance, and refunded Powell's premium payments.⁷²

78. Federal Life terminated its agency agreement with Respondents effective September 9, 2005.⁷³

Unearned Premiums Retained

79. On or about August 27, 2007, Family Life sued Sistrunk in Hennepin County District Court seeking a judgment for \$127,828.43.⁷⁴ The basis for the suit is in the "Factual Background" of the Hennepin County District Court Order, dated May 2, 2008.⁷⁵ The Order of Dismissal states, in relevant part, as follow:

Defendant was an insurance agent for plaintiff from July, 1996 until November, 2003. Plaintiff received the customer's insurance premiums and Defendant received commissions on those premiums. The insurance contracts provided

⁷¹ Ex. 15 at DOC000645 - DOC000646; see also Wallach Test.

⁷² Ex. 15 at DOC000649 - DOC000650; Wallach Test.; Riordan Test.

⁷³ Ex. 15 at DOC000645 - DOC000646; see also Wallach Test.

⁷⁴ Hennepin County Dt.Ct. File No. 27-CV-07-17427; see also Ex. 55.

⁷⁵ Ex. 55, pp. 1-2.

that Plaintiff was obligated to return any premium received on policies that lapsed within six months of the effective date. Plaintiff received a security interest in any commissions income paid to the Defendant. Upon reimbursement of the customer's premium for a lapsed policy, Plaintiff had the right to charge back the Defendant for the premium commission paid to Defendant, enforced by its security interest. Plaintiff calculates damages as a cumulative total of charge backs not collected from Defendant.

The lawsuit was dismissed when Family Life failed to submit a response to Sistrunk's motion for summary judgment, under Minn. R. Civ. P. 56.

80. The Department submitted substantial evidence to substantiate Family Life's claim that Sistrunk failed to remit unearned advanced commissions.⁷⁶ Specifically, the Department submitted an accounting of Sistrunk's commissions and deductions from September 1997 through March 2007.⁷⁷ There is no accounting for the period from July 1996 through August 1997; hence, the Family Life accounting record is incomplete.

81. Sistrunk received unearned advanced commissions paid by Americo because of his misconduct and deceit.⁷⁸

82. Sistrunk received unearned advanced commissions paid by Federal Life because of his misconduct and deceit.⁷⁹

OTHER FINDINGS

83. Sistrunk's testimony is not credible that every signature on the insurance documents at issue in this case is genuine and that every one of his former customers who testified at the hearing lied under oath.⁸⁰

84. The ALJ finds Neal's testimony credible that he thought he was signing papers related to an already issued Family Life policy, not a new Americo policy.

⁷⁶ Ex. 22; Tran Test; see *also* Ex. 6.

⁷⁷ Ex. 22. The ALJ has characterized the content of Exhibit 22 as an accounting of credit and debits cognizant that the testimony from Tran was more complicated than this. Tran explained that there were

⁷⁸ Ex. 8 at DOC000954 - DOC000955; Hittner Test. (Hittner testified that, due to a loss sharing agreement with Sistrunk's general agent, the balance due and owing Americo was collected from the general agent. Sistrunk confirmed that he never paid his general agent for this debt).

⁷⁹ Ex. 17 at DOC0001030; Kaefer Test. (Ms. Kaefer testified that, due to a loss sharing agreement with Sistrunk's general agent, the outstanding balance owed by Respondents to Federal Life was approximately \$6,377. Sistrunk confirmed, however, that he never paid Federal Life or his general agent for any portion of this debt).

⁸⁰ Sistrunk Test.

85. Sistrunk's representations in response to both the Department's request for written information and to an Order to Appear, that William Perkins was Freddie Neal's brother and that the transaction was legitimate is not credible.

86. Contrary to Respondents' representations to Americo, Browne and Perkins are not related, a fact known to Respondents at the time they indicated that Browne was Perkins' son.⁸¹ The ALJ finds that Browne did not authorize Respondents to deduct payments from Browne's checking account to pay for a Perkins policy.

87. At the hearing, Smith testified consistently and credibly with her written complaint and affidavit that the signatures appearing on the insurance documents were not authorized by her and were forgeries.⁸²

88. Sistrunk was not credible when he denied to Americo Vice-President Cathy Hunt that he was not taking Family Life's business by attempting to move Crofton to an Americo insurance product.⁸³

89. Crofton's testimony at the hearing confirmed credibly that the signatures appearing on the insurance documents were not authorized by him and were forgeries.⁸⁴

90. At the hearing, Mr. Holthusen testified credibly that the signatures appearing on the insurance documents were not authorized by him and were forgeries.⁸⁵

91. At the hearing, Buckner testified credibly that Watson is not her niece and that she does not know anyone by that name.⁸⁶ Buckner also confirmed that the signatures appearing on the insurance documents were not authorized by her and were forgeries.⁸⁷

92. D. Williams testified credibly that Quarterman was not her brother and that she did not have a relationship with Quarterman "that would warrant my paying premium on this policy."⁸⁸

93. Sistrunk's explanation to Federal Life relative to Roosevelt's policy is not credible.⁸⁹

⁸¹ Browne Test.; Smith Test.; Sistrunk Test.

⁸² Browne Test.; Smith Test.

⁸³ Ex. 4 at DOC00061.

⁸⁴ Crofton Test.; Ex. 4 at DOC000390 - DOC000391.

⁸⁵ Holthusen Test.

⁸⁶ Buckner Test.

⁸⁷ Buckner Test.

⁸⁸ Ex. 1 at DOC000009.

⁸⁹ Ex. 2 at DOC000033 - DOC000034; *see also* Riordan Test.

94. At the hearing, D. Williams testified credibly that Roosevelt is not her brother and that she does not know anyone by that name.⁹⁰ Moreover, she confirmed that the signatures appearing on the insurance documents were not authorized by her and were forgeries.⁹¹

95. The ALJ accepts Ms. King's letter of February 26, 2005, claiming that she did not authorize a new insurance policy with Federal Life as credible.

96. The ALJ accepts Ms. Reed's letter of March 5, 2005 claiming that she did not authorize a new insurance policy with Federal Life as credible.

97. The ALJ accepts Ms. Powell's letter of May 25, 2005 claiming that she did not authorize new insurance policies with Federal Life as credible.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge (ALJ) and the Commissioner of Commerce are authorized to consider the charges against Respondents under Minn. Stat. §§ 14.50, 45.027, subd. 7 and 11, and 60K.43, subds. 2, 3, and 5 (2001).

2. Respondents received due, proper, and timely notice of the charges against them, and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the ALJ.

3. The burden of proof in this proceeding is on the Department to show by a preponderance of the evidence that Respondent committed the allegations of violations.⁹²

4. A Licensee shall refrain from engaging in an act or practice which demonstrates that the Licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the Commissioner.⁹³

5. The Commissioner may impose discipline on an insurance producer's license for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility.⁹⁴

⁹⁰ Williams Test.

⁹¹ Williams Test.

⁹² Minn. R. 1400.7300, subp. 5 (2007).

⁹³ Minn. Stat. § 45.027, subd. 7(a)(4) (2006).

⁹⁴ Minn. Stat. § 60K.43, subd. 1(8) and (10) (2001).

6. The Commissioner may impose discipline on an insurance producer's license for violating any insurance laws, including chapter 45 or chapters 60A to 72A, or violating any regulation, subpoena, or order of the Commissioner.⁹⁵

7. A Licensee, or other person subject to the jurisdiction of the Commissioner shall comply with requests for information, documents, or other requests from the Department within the time specified in the request.⁹⁶

8. Every agent must observe high standards of commercial honor and just and equitable principles of trade in the conduct of the agent's insurance business.⁹⁷

9. In addition to any other actions, the Commissioner may discipline license of a person subject to the duties and responsibilities entrusted to the Commissioner if the Commissioner finds that the person has provided false, misleading, or incomplete information to the Commissioner or has refused to allow a reasonable inspection of records or premises.⁹⁸

10. Respondents participated in, directed, authorized, or failed to learn about, diligently investigate, or prevent the forging of Neal's and Perkins' signatures on the Neal Americo life insurance policy application. This conduct demonstrates Respondents are incompetent, untrustworthy, financially irresponsible, or otherwise unqualified to act under the license granted by the Commissioner, contrary to Minn. Stat. §§ 45.027, subd. 7(a)(4), 60K.43, subd. 1(8) and (10) (2001), and Minn. R. 2795.1000 (2007).⁹⁹

11. Respondents provided false, misleading, or incomplete information to the Department with their explanation regarding the Neal transaction, contrary to Minn. Stat. §§ 45.027, subds. 1a and 7(a)(3), and 60K.43, subd. 1(2) (2001).¹⁰⁰

12. Respondents participated in, directed, authorized, or otherwise, failed to learn about, diligently investigate, or prevent the forging of Perkins' and Browne's signatures on the Perkins life insurance policy application. This conduct demonstrates they are incompetent, untrustworthy, financially irresponsible, or otherwise unqualified to act under the license granted by the Commissioner, contrary to Minn. Stat. §§ 45.027, 60K.43, and Minn. R. 2795.1000.¹⁰¹

13. Respondents participated in, directed, authorized, or otherwise, failed to learn about, diligently investigate, or prevent the forging of Browne's signature on the Browne life insurance policy application. This conduct demonstrates they are incompetent, untrustworthy, financially irresponsible, or otherwise unqualified to act

⁹⁵ Minn. Stat. § 60K.43, subd. 1(2) (2001).

⁹⁶ Minn. Stat. § 45.027, subd. 1a (2006).

⁹⁷ Minn. R. 2795.1000 (2007).

⁹⁸ Minn. Stat. § 45.027, subd. 7(3) (2006).

⁹⁹ See, e.g., Gergen Test.

¹⁰⁰ See, e.g., Gergen Test.

¹⁰¹ See, e.g., Gergen Test.

under the license granted by the Commissioner, contrary to Minn. Stat. §§ 45.027, 60K.43, and Minn. R. 2795.1000.¹⁰²

14. Respondents participated in, directed, authorized, or otherwise, failed to learn about, diligently investigate, or prevent the forging of Smith's signature on the Smith life insurance policy application. This conduct demonstrates they are incompetent, untrustworthy, financially irresponsible, or otherwise unqualified to act under the license granted by the Commissioner contrary to Minn. Stat. §§ 45.027, 60K.43, and Minn. R. 2795.1000.¹⁰³

15. Sistrunk misled Americo by not checking "Yes" to the question, "Is the proposed [Crofton] insurance intended to replace an existing insurance or annuity policy?"¹⁰⁴

16. Respondents participated in, directed, authorized, or otherwise, failed to learn about, diligently investigate, or prevent the forging of Crofton's signature on the life insurance policy application. This conduct demonstrates they are incompetent, untrustworthy, financially irresponsible, or otherwise unqualified to act under the license granted by the Commissioner, contrary to Minn. Stat. §§ 45.027, 60K.43, and Minn. R. 2795.1000.¹⁰⁵

17. Respondents participated in, directed, authorized, or otherwise, failed to learn about, diligently investigate, or prevent the forging of Mr. Holthusen's signature on the life insurance policy application and EFT document. This conduct demonstrates they are incompetent, untrustworthy, financially irresponsible, or otherwise unqualified to act under the license granted by the Commissioner, contrary to Minn. Stat. §§ 45.027, 60K.43, and Minn. R. 2795.1000.¹⁰⁶

18. Respondents participated in, directed, authorized, or otherwise, failed to learn about, diligently investigate, or prevent the forging of Buckner's signature on the EFT authorization form for Watson's life insurance policy. This conduct demonstrates they are incompetent, untrustworthy, financially irresponsible, or otherwise unqualified to act under the license granted by the Commissioner, contrary to Minn. Stat. §§ 45.027, 60K.43, and Minn. R. 2795.1000.¹⁰⁷

19. Respondents participated in, directed, authorized, or otherwise, failed to learn about, diligently investigate, or prevent the forging of D. Williams' signature on the EFT authorization form for Quarterman's life insurance policy. This conduct demonstrates they are incompetent, untrustworthy, financially irresponsible, or

¹⁰² See, e.g., Gergen Test.

¹⁰³ See, e.g., Gergen Test.

¹⁰⁴ Ex. 4 at DOC00367.

¹⁰⁵ See, e.g., Gergen Test.

¹⁰⁶ See, e.g., Gergen Test.

¹⁰⁷ See, e.g., Gergen Test.

otherwise unqualified to act under the license granted by the Commissioner, contrary to Minn. Stat. §§ 45.027, 60K.43, and Minn. R. 2795.1000.¹⁰⁸

20. Respondents participated in, directed, authorized, or otherwise, failed to learn about, diligently investigate, or prevent the forging of D. Williams' signature on the EFT authorization form for Roosevelt William's life insurance policy. This conduct demonstrates they are incompetent, untrustworthy, financially irresponsible, or otherwise unqualified to act under the license granted by the Commissioner, contrary to Minn. Stat. §§ 45.027, 60K.43, and Minn. R. 2795.1000.¹⁰⁹

21. Respondents participated in, directed, authorized, or otherwise, failed to learn about, diligently investigate, or prevent the forging of King's signature on the life insurance policy application and EFT document. This conduct demonstrates they are incompetent, untrustworthy, financially irresponsible, or otherwise unqualified to act under the license granted by the Commissioner, contrary to Minn. Stat. §§ 45.027, 60K.43, and Minn. R. 2795.1000.¹¹⁰

22. Respondents participated in, directed, authorized, or otherwise, failed to learn about, diligently investigate, or prevent the forging of Reed's signature on the life insurance policy application. This conduct demonstrates they are incompetent, untrustworthy, financially irresponsible, or otherwise unqualified to act under the license granted by the Commissioner, contrary to Minn. Stat. §§ 45.027, 60K.43, and Minn. R. 2795.1000.¹¹¹

23. Respondents participated in, directed, or authorized, or otherwise, failed to learn about, diligently investigate, or prevent the forging of Powell's signature on the Powell life insurance policy application and EFT document. This conduct demonstrates they are incompetent, untrustworthy, financially irresponsible, or otherwise unqualified to act under the license granted by the Commissioner, contrary to Minn. Stat. §§ 45.027, 60K.43, and Minn. R. 2795.1000.¹¹²

24. Respondents participated in, directed, or authorized, or otherwise, failed to learn about, diligently investigate, or prevent the forging of Powell's signature on the life insurance policy application and EFT document for her minor son, C.S. This conduct demonstrates they are incompetent, untrustworthy, financially irresponsible, or otherwise unqualified to act under the license granted by the Commissioner, contrary to Minn. Stat. §§ 45.027, 60K.43, and Minn. R. 2795.1000.¹¹³

¹⁰⁸ See, e.g., Gergen Test.

¹⁰⁹ See, e.g., Gergen Test.

¹¹⁰ See, e.g., Gergen Test.

¹¹¹ See, e.g., Gergen Test.

¹¹² See, e.g., Gergen Test.

¹¹³ See, e.g., Gergen Test.

25. A preponderance of the evidence established Sistrunk owes Family Life a substantial debt balance for advanced commissions. The record fails to establish that ongoing commissions attributable to Sistrunk's customer premiums will offset the substantial debt balance owed to Family Life.¹¹⁴ Sistrunk's failure to acknowledge and pay a legitimate debt demonstrates that he is incompetent, untrustworthy, financially irresponsible, or otherwise unqualified to act under the license granted by the Commissioner in violation of Minn. Stat. §§ 45.027, 60K.43, and Minn. R. 2795.1000.¹¹⁵

26. Sistrunk received unearned advanced commissions from Americo as seen in paragraphs 14 through 54 of the Findings of Facts above. Sistrunk's failure to acknowledge and pay a legitimate debt demonstrates that he is incompetent, untrustworthy, financially irresponsible, or otherwise unqualified to act under the license granted by the Commissioner in violation of Minn. Stat. §§ 45.027, 60K.43, and Minn. Rule 2795.1000.¹¹⁶

27. Sistrunk engaged in acts that demonstrate Sistrunk received unearned advanced commissions from Federal Life as seen in paragraphs 55 through 78 of the Findings of Facts above. Sistrunk's failure to acknowledge and pay a legitimate debt demonstrates that he is incompetent, untrustworthy, financially irresponsible, or otherwise unqualified to act under the license granted by the Commissioner in violation of Minn. Stat. §§ 45.027, 60K.43, and Minn. Rule 2795.1000.

28. Respondents breached the fiduciary duty that they owed to their clients under Minn. Stat. § 45.026.

29. Respondents failed to show cause as to why discipline should not be imposed against them.¹¹⁷

30. An Order by the Commissioner imposing discipline against Respondents for their numerous violations of law and rule is in the public interest.

Based on the Conclusions, the ALJ makes the following:

¹¹⁴ Ex. 52.

¹¹⁵ See, e.g., Gergen Test.

¹¹⁶ See, e.g., Gergen Test.

¹¹⁷ Minn. Stat. §§ 45.027, subd. 7(b) and 60K.43, subds. 2 and 5 (2006).

RECOMMENDATION

IT IS RECOMMENDED that the Department impose discipline against Respondents pursuant to Minn. Stat. §§ 45.026, 45.027 and 60K.43.

Dated: January 23, 2009

s/Manuel J. Cervantes
MANUEL J. CERVANTES
Administrative Law Judge

Reported: Digitally recorded; no transcript prepared.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Glenn Wilson, Commissioner, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, or call the Department at (651) 296-4026, to learn about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

This case involves a pattern of illicit conduct on the part of a Minnesota licensed insurance agent, Respondents Kevin D. Sistrunk (Sistrunk), and his company, Kaarma Insurance Agency, Inc. Sistrunk repeatedly submitted policy applications upon which he forged or caused to be forged the applicants' signatures on various policy documents, including applications and EFT forms. By submitting new and unauthorized insurance policies, Sistrunk was assured of advance commissions, albeit, unearned.

This conduct was an abuse of the agent compensation method which insurance companies utilized to pay their agents. Sistrunk received advanced commissions on these sales, ranging from 6-12 months of advanced commissions, on policies that did not last long enough for Sistrunk to earn the commission that had been advanced to him. The evidence shows that Respondent had a poor persistency rating at all three of the insurance companies involved in this case. The insurance company-agent relationships ended because the companies became aware of the fraudulent conduct. Respondent ultimately had a debt balance when his tenure with each insurance company ended because many of the insurance policies for which he was paid advanced commissions were either voided at their inception, or otherwise, did not last long enough for Sistrunk to earn the commission for which he had already been paid.

The Department attempted to establish an amount owed by Sistrunk to Family Life in charge backs by submitting Ex. 22. Sistrunk was an agent for Family Life from July 1996 through November 2003. The Department did not provide the relevant records for Sistrunk from July 1996 through August 1997 and, because of that, the record is incomplete. Nevertheless, taking the records that were submitted at face value, they demonstrate a substantial outstanding balance owed by Respondents to Family Life for the period from September 1997¹¹⁸ through March 2007.¹¹⁹ However, given the record before the trier of fact, the ALJ concludes that the Department has established that Sistrunk does owe Family Life a substantial amount relative to charge backs even though the record is insufficient to determine the precise amount.

Credibility is often an issue in cases that come before an ALJ. In this case, credibility is not an issue because the overwhelming documentary evidence shows a pattern of dishonesty on the part of Sistrunk. Believing him was therefore difficult. Examples of the documentary evidence includes Sistrunk's contradictory writings, first, acknowledging that Crofton was going to cancel his Family Life policy, then denying that he did not know Crofton was going to cancel his policy¹²⁰; Sistrunk was elusive and could not explain to the Americo Vice President how D. Williams' check was altered or why he wrote down that Roosevelt Williams was her brother when Sistrunk knew he was not¹²¹; also, there was an apparent discrepancy between the signatures on King's complaint letter of February 26, 2005 and the signatures on application and EFT.¹²² Based on these examples, and more enumerated throughout the facts above, Sistrunk's blanket statement that all the witnesses that testified at the hearing lied is not believable.

M. J. C.

¹¹⁸ Ex. 22, DOC001269.

¹¹⁹ Ex. 22, DOC001773.

¹²⁰ Ex. 4 at DOC00341 and DOC00383.

¹²¹ Ex. 2 at DOC000033 - DOC000034; see *a/so* Riordan Test.

¹²² Ex. 13 at DOC000535-DOC000538.